services would justify a different risk-adjusted cost of capital or depreciation rate."[123] The Commission noted that 11.25 percent was the currently authorized rate of return at the federal level, but it held that states may "adjust the cost of capital if a party demonstrates to a state commission that either a higher or lower level of cost of capital is warranted."[124]

83. In the *Triennial Review Order*, the Commission clarified that a TELRIC-based cost of capital should reflect the risks of a competitive market.[125] Because the objective of TELRIC is to establish a price that replicates the price that would exist in a market in which there is facilities-based competition, the Commission held that TELRIC prices should reflect the risk of losing customers to other facilities-based carriers.[126] The Commission found that calculating rates based on an assumption of a forward-looking network that uses the most efficient technology (*i.e.*, the network that would be deployed in a competitive market), without also compensating for the risks associated with investment in such a network, would reduce artificially the value of the incumbent LEC network and send improper pricing signals to competitors.[127] The Commission stated that establishing UNE prices based on an unreasonably low cost of capital would discourage competitive LECs from investing in their own facilities and thus slow the development of facilities-based competition.

84. As noted above, the importance of this clarification was to confirm that state commissions must use a consistent set of assumptions when they calculate the three components of rates (operating expenses, cost of capital, and depreciation expense).[128] That is, if the network assumptions are based on projections about what a network would look like in the long-run assuming facilities-based competition, the same approach should be followed in developing the cost of capital. We invite parties to comment on whether this principle should apply even if the Commission adopts a UNE pricing methodology that is tied more closely to the existing network of an incumbent LEC. If we ultimately were to find that state commissions should consider an incumbent LEC's existing network in calculating the investment in the network, should they also calculate cost of capital based on the existing competitive risk associated with that network?

85. We ask parties to identify the specific variables that determine the cost of capital under the network assumptions that they advocate, and to offer suggestions as to how to quantify the various components of risk that should be reflected in a company's cost of capital. What are the theoretical arguments that support the use of these variables? Is there empirical evidence regarding the effect each variable has on a carrier's cost of capital? How should the cost of debt and cost of equity be weighted? How should states determine the appropriate capital structure? Is incremental investment typically funded through debt or equity? Should the cost of capital

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[123] *Local Competition Order*, 11 FCC Rcd at 15856, para. 702.

[124] *Id*

[125] *Triennial Review Order* at paras. 680-84.

[126] *Id.* at para. 680.

[127] *Id* at paras. 680-82.

[128] *Id* at paras. 682, 689.

reflect this?

86. In the *Triennial Review Order*, we recognized that one important risk factor to consider is the risk of losing customers to facilities-based competitors. How should this risk be measured? What is the relationship between this risk and the network assumptions that we adopt? Is it always the case that supplying a given product or service in a fully competitive market is more risky than supplying the same product or service in a market in transition from monopoly to competition? We also ask parties to address the role of fixed and sunk costs, assumptions about the level and kind of competition, and entry strategies of competitors in affecting risk and cost of capital of incumbent carriers.

87. We ask parties to comment on the relationship, if any, between our unbundling rules and the risk of stranded investment. The *Local Competition Order* suggested that the availability of long-term contracts presented one mechanism by which incumbent LECs might reduce the risk of stranded investment.[129] We ask parties to discuss whether long-term contracts have been used in the provision of UNEs. If they have not, why not? Does the process of setting prices at forward-looking costs in an industry in which costs generally are decreasing, and revising these prices periodically, discourage entry into long-term contracts? How, if at all, should any increased risk of stranded investment due to the use of month-to-month contracts be considered in calculating the cost of capital? How can this risk be quantified? Does the use of economic depreciation eliminate the need to compensate separately an incumbent LEC for any additional risk of stranded investment?

88. We also ask parties to comment on ways in which the Commission might simplify the task of setting the cost of capital. For example, if we retain our current rules, and the cost of capital is intended to reflect the risk of participating in a market with facilities-based competition, is there any reason that the cost of capital would vary among different states, or among different companies? If not, would it be appropriate for the Commission to establish a particular cost of capital for states to employ? If we move to a pricing regime that looks more closely at the incumbent LEC's actual network, are there any presumptions we could establish to facilitate selection of a cost of capital? We ask parties to provide studies in support of their proposals. Regardless of our network assumptions, are there particular models for projecting cost of capital that clearly should or should not be used? Are there particular data sources that should or should not be given deference? We ask parties to identify proxy companies or industries for use in estimating the UNE cost of capital and to explain in detail why they believe the identified proxies are appropriate.[130]

89. In the *Triennial Review Order*, the Commission also clarified that a TELRIC-based cost of capital should reflect any unique risks (above and beyond the competitive risks discussed above) associated with new services that might be provided over certain types of

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[129] *Local Competition Order*, 11 FCC Rcd at 15849, para. 687.

[130] Because no actual company is in the business solely of providing UNEs, it is necessary to determine the risk associated with the UNE business by using as a proxy existing companies or industries that are believed to have a comparable level of risk.

facilities.[131] The Commission reiterated its finding from the *Local Competition Order* that different UNEs may have different costs of capital[132] and clarified that the use of UNE-specific costs of capital is an acceptable method of reflecting in UNE prices any risk associated with new facilities that employ new technology and offer new services. We ask parties to comment on when it would be appropriate for a state commission to establish different costs of capital for different UNEs. What types of risks would distinguish one element from another with respect to cost of capital? Would such an approach accurately reflect how incumbent LECs actually raise capital (*i.e.*, on an entity-wide as opposed to a per-facility basis) and, if not, is this relevant?

90. Although states have had the option of establishing UNE-specific costs of capital since 1996, we are not aware of any states that have followed this approach. We ask parties to comment on the reasons why such an approach has not been implemented. We are particularly interested in comments from state commissions that have considered and rejected this approach. Are there steps the Commission could take to facilitate the ability of states to establish UNE-specific costs of capital? Do the benefits of using a cost of capital that more accurately reflects the risk associated with providing a particular UNE outweigh the administrative burden of such an approach?

91. We ask parties to explain whether different proxy groups should be used to estimate the cost of capital for different UNEs. If parties believe that different proxy groups should be used, they should identify these proxy groups and explain in detail why these are appropriate. An alternative approach would be to estimate the cost of capital based on a single proxy group and then adjust that cost of capital according to the relative risk of the particular UNE. Parties that favor such an approach should explain in detail how to make the relative risk adjustments. Please also identify the proxy group of companies used as the starting point to estimate the cost of capital and explain in detail why this proxy group is appropriate.

D. Depreciation Expense

92. Economic depreciation is a method of reflecting anticipated declines in the net present value of an asset over the course of its useful life. If equipment prices are expected to decline over time, the value of equipment currently in use in the network (and therefore the price under a forward-looking methodology) should decline over time at the same rate. Calculating the appropriate rate of price decline is quite complicated because it is based largely on projections about future events. In UNE pricing cases, however, the task is made even more difficult by the manner in which most computer cost models calculate prices. Specifically, most models include a levelization function that imposes a constant price schedule over the life of the asset. As we discuss in more detail below, there is an inherent tension between levelizing prices, on the one hand, and establishing UNE prices that reflect anticipated equipment price changes, on the other hand.

93. There are two components of depreciation – the useful life of the asset, and the

[131] *Triennial Review Order* at para. 683.

[132] *Local Competition Order*, 11 FCC Rcd at 15856, para. 702 ("We note that the risk-adjusted cost of capital need not be uniform for all elements.").

rate at which the asset is depreciated over that useful life. In the *Local Competition Order*, the Commission stated that properly designed depreciation schedules should take into account expected declines in the value of goods.[133] Similarly, the Commission's rules require the use of "economic depreciation" but provide no additional detail.[134] In the *Triennial Review Order*, we declined to mandate any particular set of economic lives because there was no record to support such a finding.[135] With respect to the rate of depreciation, however, we clarified that a carrier may accelerate recovery of the initial capital outlay for an asset over its life to reflect any anticipated decline in its value.[136] Recovering more of the initial capital outlay for the asset in the early years would enable a carrier to recover less in later years, thereby allowing it to compete with carriers that have purchased new, lower-priced equipment in those later years.[137]

1. Asset Lives

94. The useful life of an asset normally is determined by comparing the operating cost of the existing asset with the operating cost plus the investment cost of a new asset that performs the same functions (assuming the new equipment will generate the same revenue as the existing equipment). Estimating asset lives is difficult because the estimate depends on the physical life of the existing asset, the expected operating cost of the existing asset, and the expected investment and operating cost of new assets, some of which may not yet have been invented.

95. In 1994 and 1995, the Commission simplified its depreciation process by establishing a "safe harbor" range of asset lives for use by incumbent LECs.[138] The Commission modified the range for digital switching equipment in 1999.[139] Asset lives prescribed by the Commission were intended to be forward-looking when they were established,[140] and the Supreme Court specifically found that FCC-prescribed asset lives were a reasonable starting point for developing the depreciation expense to be used in setting UNE prices.[141]

96. In the *Biennial Review Depreciation Order*, the Commission noted that more than

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[133] *Id* at 15849, para. 686.

[134] 47 C.F.R. § 51.505(b)(3).

[135] *Triennial Review Order* at para. 688.

[136] *Id.* at paras. 689-91

[137] *Id* at para. 690.

[138] *Simplification of the Depreciation Prescription Process*, CC Docket No. 92-296, Second Report and Order, 9 FCC Rcd 3206 (1994); Third Report and Order, 10 FCC Rcd 8442 (1995).

[139] *1998 Biennial Review – Review of Depreciation Requirements for Incumbent Local Exchange Carriers*, CC Docket No. 98-137, Report and Order, 15 FCC Rcd 242, 247-48, para. 13 (1999) (*Biennial Review Depreciation Order*).

[140] *See USF Inputs Order*, 14 FCC Rcd at 20344-45, para. 426 ("We believe this process of combining statistical analysis of historical information with forecasts of equipment replacement generates forward-looking projected lives that are reasonable estimates of economic lives and, therefore, are appropriate measures of depreciation.").

[141] *Verizon v FCC*, 535 U.S. at 519-20.

20 states have used FCC regulatory lives in calculating TELRIC-based UNE prices. In the same order, the Commission rejected the use of asset lives reflected in financial reporting.[142] It did, however, permit incumbent LECs to seek waivers that would allow them to use financial book lives,[143] although no LEC has yet sought a waiver under these rules. This decision did not, however, specifically consider whether FCC lives or financial book lives are more appropriate for use in a TELRIC calculation. In the universal service proceeding, the Commission used FCC-prescribed regulatory lives in running the Synthesis Model.[144] In its section 271 decisions, the Commission has found both FCC regulatory lives and financial book lives to be consistent with TELRIC principles.[145] Similarly, in the *Triennial Review Order*, the Commission declined to mandate one set of asset lives or the other.[146]

97. The issue of asset lives is one where we believe more guidance from the Commission would be helpful to state commissions. Although the record in the *Triennial Review* proceeding did not offer a basis for providing such guidance, this NPRM provides an opportunity for parties to present evidence to support such guidance.

98. In past decisions, the Commission has been reluctant to rely solely on financial reporting lives out of concern that Generally Accepted Accounting Principles (GAAP) might permit companies to adopt depreciation methods that result in excessive depreciation expense.[147] Is this reluctance warranted in the context of UNE ratesetting? Do the financial lives used to develop earnings reported to shareholders match those that companies use to plan their future capital expenditures? If not, are the financial lives used to develop reported earnings shorter or longer than those that companies use to plan their capital expenditures? Please explain why these lives differ, assuming that they do. We request that competitive LECs and incumbent LECs submit the lives that they use to plan their capital expenditures.

99. We seek comment on how financial reporting lives are developed and whether they accurately represent the anticipated economic life of assets. For example, how do financial reporting lives reflect the potential impact of future technologies? With respect to the major categories of plant and equipment (switching, loops, interoffice transport), is there objective evidence that anticipated changes in technology will cause equipment installed today to have shorter lives than the same equipment that was installed in the past? Is there objective evidence that potential advances in technology may actually lengthen the useful life of some types of

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[142] *Biennial Review Depreciation Order*, 15 FCC Rcd at 262-63, para. 48 ("We believe that giving incumbent LECs the right to select, for regulatory purposes, any depreciation rate allowed by GAAP [Generally Accepted Accounting Principles] is inappropriate as long as incumbent LECs reserve the right to make claims for regulatory relief based on the increased depreciation that would result from granting them that flexibility.").

[143] *Id.* at 252-53, para. 25 (establishing waiver requirements).

[144] *USF Inputs Order*, 14 FCC Rcd at 20344, para. 426.

[145] *See, e.g., Verizon Rhode Island 271 Order*, 17 FCC Rcd at 3316-17, para. 30 (FCC lives); *SBC Kansas/Oklahoma 271 Order*, 16 FCC Rcd at 6274, para 76 (financial lives).

[146] *Triennial Review Order* at para. 688.

[147] *Biennial Review Depreciation Order*, 15 FCC Rcd at 263, para. 48.

assets? What asset lives are appropriate for equipment in the existing incumbent LEC network that is, or soon will be, obsolete? How relevant, if at all, is the actual retirement experience of an incumbent LEC, its depreciation reserves, or its projected investment plans for the near future? Is there other objective evidence the Commission should consider in this regard? We encourage parties to provide studies forecasting the economic lives of the major local exchange carrier assets in support of their proposals.

100. We also seek comment on whether compliance with GAAP results in any systematic bias. For example, does the "conservatism" principle underlying GAAP lead to a downward bias in asset lives?[148] How much discretion does GAAP give incumbent LECs in setting asset lives? Will pressure from the financial markets ensure that asset lives are estimated accurately? Does the use of different asset lives for different regulatory purposes create incentives for regulatory arbitrage?

101. We also ask parties to comment on whether FCC regulatory lives reflect the competition and technology assumptions required under a forward-looking costing methodology. We note that it has been almost a decade since the Commission first established forward-looking asset lives, and the Commission last adjusted its "safe harbor" asset lives in 1999.[149] Are these lives still accurate? We ask parties to explain whether the validity of FCC asset lives depends in part on whether the Commission retains a scorched node approach to network design or instead adopts its tentative conclusion that forward-looking costs should more closely account for the real-world attributes of the routing and topography of an incumbent LEC's network.

2. Depreciation Rate

102. As noted above, economic depreciation is a method of reflecting anticipated declines in the net present value of an asset over the course of its useful life. Where equipment prices are expected to decline over time, the value of existing network assets (and therefore prices under a forward-looking methodology) should decline at the same rate. In the *Triennial Review Order*, we stated that front-loading depreciation may be appropriate in such situations, although we noted that there were a number of unanswered questions regarding precisely how carriers could reflect anticipated equipment price changes in their UNE prices.[150] This proceeding presents an opportunity to explore these questions.

103. As noted above, the rate of equipment price changes, if normalized to reflect advances in technology, should be a significant factor in calculating TELRIC prices. We ask

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[148] GAAP is "guided by the conservatism principle which holds, for example, that when alternative expense amounts are acceptable, the alternative having the least favorable effect on net income should be used." *Biennial Review Depreciation Order*, 15 FCC Rcd at 263, para. 48 (quoting *Simplification of the Depreciation Prescription Process*, CC Docket No. 92-296, Report and Order, 8 FCC Rcd 8025, 8044 (1993)).

[149] *Simplification of the Depreciation Prescription Process*, CC Docket No. 92-296, Second Report and Order, 9 FCC Rcd 3206 (1994); Third Report and Order, 10 FCC Rcd 8442 (1995); *Biennial Review Depreciation Order*, 15 FCC Rcd at 247-48, para. 13.

[150] *Triennial Review Order* at paras. 690-91 Conversely, back-loading depreciation may be appropriate when equipment prices are rising.

parties to comment on the relationship between the rate of change in equipment prices and the rate of change in final product prices. To what extent do companies in competitive markets consider changes in the economic efficiency of assets (*e.g.*, price changes, technological advances) in deciding how quickly to recover investments? How can we measure anticipated changes in the efficiency of equipment? To be useful, must any measurement of equipment price changes also reflect advances in the capabilities of the equipment? Are there publicly available price indices that adjust for changes in economic efficiency that could be used in establishing depreciation schedules? Are there other sources of information that would be more appropriate for use in establishing rates based on a forward-looking costing methodology? Parties should explain how different sources of data address changing capabilities of equipment over time. Parties also should explain whether recent declines in equipment costs, if any, are useful in establishing a general approach going forward, or are they instead extraordinary events caused by the recent sudden decline in markets for telecommunications equipment generally and therefore not reliable indicators of general trends in equipment pricing?

104. If the investment cost of equipment declines from year to year, UNE prices also should decline from year to year, all else being equal. Similarly, if investment costs are expected to increase from year to year, then UNE prices also should increase from year to year. A regime with wholesale prices that change over time may be a rational response to a market where investment costs are changing and facilities-based competition exists or is expected to exist. We ask parties to comment on the costs and benefits of such a regime. We also ask parties to address whether adjustments to depreciation expense represent the best mechanism for reflecting anticipated equipment price changes in UNE prices. If UNE prices can be adjusted directly to reflect anticipated equipment price changes, there may be no need to develop complicated mechanisms for reflecting such changes in depreciation expense.

105. One of the difficulties in reflecting changing equipment costs in UNE prices is that most cost models used in setting TELRIC prices do not reflect the actual investment patterns of carriers. Carriers continually invest in new assets and depreciate (and eventually retire) old assets. In contrast, the cost models typically assume that the entire investment in the network is made at a single point in time, and that no additional investment is made in subsequent periods. This same process is then repeated each time a state commission sets new rates. Because the return on investment will decline in each period as the base of undepreciated investment declines, even straight-line depreciation will result in rapidly declining prices over time unless recovery is levelized across time periods. Consequently, a "levelization" function is included in most cost models to replicate real-world investment and recovery patterns.

106. The levelization of rates that occurs in most cost models appears to be inconsistent with the concept of adjusting UNE prices to reflect anticipated changes in equipment prices. We ask parties to comment on this statement and to discuss the consequence of running current cost models without the levelization function. Does the use of levelization send incorrect signals to the extent that it produces UNE prices that do not vary over time even when input prices are rising or falling? Would there be dramatic variation in rates from year to year if rates were not levelized? Would this type of variation distort the economic signals regarding the efficient use of incumbent LEC facilities by competitors?

107. An alternative method of reflecting economic depreciation might be to recover

through depreciation expense the difference between the current value of the asset and the anticipated value of the asset at the next rate proceeding. As a practical matter, how would such an approach work? How would the anticipated future value of assets be determined? One issue that arises under this alternative approach is whether and how prices should be adjusted if a state commission's expectations regarding equipment prices prove to be incorrect. We ask parties to comment on this approach to economic depreciation and to identify other approaches that might be used.

108. Given the potential difficulties associated with some of the mechanisms described above, we ask parties to comment on whether a reduction in asset lives might be used as a proxy for changing investment costs. Under what circumstances would a carrier retire an asset before the end of its useful life? Once an asset is in service, is it reasonable to assume that it would be retired early only if the net present value of the expected future cash flows associated with buying and operating new technology is higher than the expected cash flows associated with operating the old asset? If the use of shorter asset lives increases the amount of cost recovery, is this an appropriate method of reflecting anticipated technological improvements that would lower costs? Is there a risk of over-recovery if asset lives are shortened? Is there evidence that this is how unregulated companies account for the uncertainties associated with equipment price changes and other consequences of advancing technology?

E. Expense Factors

109. One area of controversy in state pricing proceedings has been the calculation of monthly operating expenses. In theory, the monthly operating cost should be calculated by estimating the total forward-looking operating expense associated with a particular network element (*e.g.*, by conducting time and motion studies of likely maintenance activities) and then dividing the total operating expense by the appropriate number of units, such as lines, to obtain the expected average operating expense. Such an approach is difficult to implement in practice, however, so regulators often estimate projected operating expenses by multiplying the projected investment in the network by an annual cost factor (ACF).[151] An ACF typically is a ratio of current expenses to current investment for a particular account. The ratio is multiplied by the projected investment to obtain the projected expenses. An alternative method of calculating monthly operating costs is to look at current operating expenses and make any adjustments to reflect anticipated experience in the period for which the projection is made, such as adjustments for productivity and inflation.

110. We seek comment on these approaches to estimating expenses. Is one approach clearly superior to the others? Under the network assumptions required by our TELRIC rules, is it correct to assume that expenses will be reduced in proportion to reductions in investment? Would such an assumption be more acceptable if we changed the network assumptions to more closely track an incumbent LEC's existing network? Would it be reasonable to assume that an incumbent LEC's current expenses represent the forward-looking costs of operating a network? Why or why not? Are there approaches to projecting expenses that do not rely on an incumbent LEC's past experience, such as benchmarking to other companies? Are there other approaches

[151] *See, e g., USF Inputs Order*, 15 FCC Rcd at 20301-02, 20304, paras. 341, 346.

that might be used to estimate expenses more accurately?

111. We invite parties to provide empirical evidence that demonstrates the factors that most influence the level of expenses. For example, are outside plant expenses more likely to be correlated to changes in labor rates, the level of outside plant investment, or some other factor or combination of factors? Do the same factors control the expenses associated with switching and transport, or are there other factors upon which those expenses should be based? Do the factors that influence expenses vary by state or by carrier? Is the level of expenses affected by the assumed life of an asset for depreciation purposes? For example, if we shorten asset lives as a proxy for accelerated depreciation, as discussed above, would it also be appropriate to reduce operating expenses under the assumption that the carrier would avoid the higher expense of operating an asset at the end of its useful life?

112. If we find that the best method of projecting expenses is to make forward-looking adjustments to actual expenses, what type of adjustments would be appropriate? If adjustments are made for inflation and productivity, how should those factors be measured? Are an incumbent LEC's past productivity gains a relevant consideration, or should we look at measures of productivity across carriers, or across the industry generally? From what sources should this information be developed?

113. We ask parties to address any specific issues that arise in connection with estimating non-plant expenses, such as customer care or common overhead. How should these costs be allocated among different elements? Is it appropriate to allocate these costs to non-recurring charges, or should they be recovered only through recurring charges?

F. Non-Recurring Charges

114. As discussed above, non-recurring costs may be thought of as the "installation" or "set-up" costs an incumbent LEC incurs processing and provisioning a competitive LEC order for a UNE. Non-recurring charges (NRCs) constitute an upfront cost to the competitive LEC that is generally not recoverable if it subsequently loses the end-user customer served with the UNE. Consequently, as the Commission recognized in the *Local Competition Order*, NRCs can be a serious barrier to entry, especially if they are unduly high.[152]

115. In the *Local Competition Order*, the Commission concluded that, as a general rule, rates for unbundled network elements should recover costs in the manner in which they are incurred.[153] The Commission required that recurring costs be recovered through recurring charges, rather than through a non-recurring charge.[154] It gave discretion to state commissions, however, to require incumbent LECs to recover non-recurring costs through recurring charges over a reasonable period of time. The Commission found that recovery of non-recurring costs through recurring charges was a "common practice" that "fully compensated" the incumbent

[152] *Local Competition Order*, 11 FCC Rcd at 15875, para. 747.

[153] *Id.* at para. 743.

[154] *Id.* at 15874-75, para. 745.

LECs for their non-recurring costs.[155] It also required that states take steps to ensure an equitable distribution of non-recurring costs among carriers that benefit from a non-recurring activity (*e.g.*, by providing the initial competitive LEC a *pro rata* refund of charges paid when a subsequent competitive LEC uses the same facility).[156]

1. Identification of Costs

116. The subject of NRCs presents two sets of issues that have been a constant source of dispute in state proceedings and in section 271 applications since 1996. The first set of issues relates to what costs an incumbent LEC should be permitted to recover for the activities needed to initiate service to a competitive LEC. In TELRIC proceedings, a significant issue has been whether the state commission should assume a state-of-the-art network in calculating non-recurring costs just as it does with recurring costs, as our rules suggest,[157] or whether it should use a different network assumption that more closely reflects the costs associated with providing services on the incumbent LEC's existing network.

117. We believe that consistency among the various components of rates is important. Using one set of network assumptions for recurring charges and a different set of network assumptions for NRCs potentially results in some over-recovery or under-recovery. Nevertheless, we are sensitive to the practical concern that network assumptions that depart significantly from an incumbent LEC's existing network might preclude recovery of the cost of non-recurring activities that would be required in establishing a competitive market. We ask parties to address whether our tentative conclusion in paragraph 52 should apply with respect to NRCs and, if it does, whether this ensures that incumbent LECs will be able to recover all of their forward-looking costs of non-recurring activities.

118. A related issue that often arises in state proceedings is the relationship between NRCs for manual activities and an incumbent LEC's operational support systems (OSS). In light of our tentative conclusion to more closely account for the real-world attributes of the routing and topography of the incumbent LEC's existing network in developing forward-looking costs, what assumptions should be made with respect to the capability of the incumbent LEC's OSS? Should the costs associated with OSS be recovered through expense factors or should separate charges be permitted? If charges to recover OSS costs are permitted, how should they be calculated? Should incumbent LECs be permitted to recover through separate OSS charges the costs associated with systems that are used for both wholesale and retail services? Given that many OSS upgrades affect both wholesale and retail functions, how should regulators allocate OSS costs between these functions? Should all costs of opening an incumbent LEC's OSS to competitors be borne by the competitors, or are there costs that are more appropriately spread among the incumbent LEC's retail customers as well?

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[155] *Id.* at 15875-76, para. 749.

[156] *Id.* at 15876, paras. 750-51.

[157] 47 C.F.R. § 51.507(e) ("Non-recurring charges . . . shall not permit an incumbent LEC to recover more than the total forward-looking cost of providing the applicable element.").

119. Even with highly automated systems, some manual activities always will be needed. We ask parties to comment on the particular activities that are not susceptible to automation. How should state commissions determine the cost of performing these activities? We note that testimony on these issues in state TELRIC proceedings typically relies primarily, if not exclusively, upon the subjective opinions of panels of subject matter experts.[158] We seek comment on how state commissions might develop more objective evidence on non-recurring costs. Would a shift to network assumptions that more closely track the incumbent LEC's existing network eliminate some of the speculation that often characterizes state proceedings? Is it appropriate to establish a presumption that an incumbent LEC's current practices with respect to non-recurring activities are efficient, or are an incumbent LEC's incentives to be efficient diminished when competitive LECs are the primary users of a particular activity?

2. Recovery of Costs

120. The second set of issues relates to whether non-recurring costs should be recovered through NRCs or through recurring charges. The costs at issue generally are labor costs, *i.e.*, the cost of sending a technician to a customer location, a remote terminal, or a central office to perform some activity that is necessary for the competitive LEC to be able to serve an end user. Beyond a general preference for recovery through recurring charges,[159] the *Local Competition Order* provided no guidance to the states as to how they should distinguish between costs recoverable through NRCs and costs to be treated as operating expenses that are recovered through recurring charges.

121. One possible guideline for making this difficult decision would be to limit recovery through NRCs to those costs that exclusively benefit the competitive LEC ordering the UNE. This approach provides a mechanism by which an incumbent LEC can recover the cost of activities related to the initiation of service by competitive LECs, while at the same time reducing the barriers to entry for competitive LECs. The cost of activities for which NRCs are not permitted generally would be recovered in recurring charges through expense factors, just as LECs recover costs associated with repair and maintenance of their networks.[160]

122. Would allowing NRCs only for activities that solely benefit a specific competitive LEC reduce the number of activities for which NRCs would be permitted? For example, should installation of a cross-connect at a feeder/distribution interface (FDI) be subject to a NRC if such a facility typically remains in place after a customer terminates service? Conversely, should placement of a cross-connect from the main distribution frame (MDF) in a central office to a competitive LEC's collocation space remain subject to a NRC because only the competitive LEC that orders the cross-connect would benefit from the work?

123. We also ask parties to comment on how an approach that limits NRCs to activities

[158] *See Qwest 9-State 271 Order*, 17 FCC Rcd at 26425, paras 214, 216.

[159] *Local Competition Order*, 11 FCC Rcd at 15875-76, para. 749.

[160] A possible exception to this approach would be in cases where the incumbent LEC can demonstrate that the cost was not considered in calculating the expense factor, *e g.*, where it did not need to perform the activity for its own operations and competitive LECs were not yet requesting the activity

benefiting a particular CLEC would be implemented by the states. Although such an approach would reduce the likelihood that NRCs would impose a barrier to competitive entry, would it also provide incumbent LECs with full recovery of their forward-looking costs? Would such an approach simplify the calculation of NRCs by state commissions? Is it necessary under such an approach to back out certain costs from the calculation of expenses to avoid double recovery? Is there a simple way to make such an adjustment? How should carriers that have paid a NRC for a particular activity be credited if an incumbent LEC subsequently eliminates the NRC and recovers those same costs through recurring charges?

124. We solicit comment on whether a contrary approach, allowing NRCs for every activity related to a competitive LEC order, would provide sufficient incentive for incumbent LECs to use mechanized processes when it is efficient to do so. Would allowing NRCs for all such activities increase the potential for over-recovery of these costs? Would regulators need to develop mechanisms to back out these costs in developing expense factors? Would it be necessary to develop some type of refund mechanism if other carriers also benefit from the work? Parties that oppose limiting the activities for which NRCs are permitted should suggest practical methods for making such adjustments in order to avoid double recovery of costs.

125. We invite parties to offer other suggestions on principles that states could apply to identify when it is appropriate to recover costs through NRCs, and the consequence of those principles on competitive entry and cost recovery. For example, of what relevance are the NRCs imposed by incumbent LECs on retail customers? Could those NRCs serve as a basis for assessing the reasonableness of NRCs imposed on competitive LECs? Could we resolve concerns about the level of NRCs by eliminating or reducing the allocation of common costs and overhead to activities for which NRCs are imposed?

3. Disconnection Costs

126. Beyond these general issues related to when NRCs should be imposed and what costs they should recover, we note that there are a number of specific issues that are a continuing source of controversy in state pricing proceedings. One issue that arises in many proceedings is the question of disconnect costs. Incumbent LECs typically favor recovering the cost of disconnecting UNEs at the time of installation, while competitive LECs generally argue that such costs, if they exist at all, should be recovered at the time service actually is disconnected.[161]

127. We note that calculating the appropriate charge for disconnection may be more complex if it is imposed at the time of installation. As an initial matter, it is difficult to predict how often disconnect costs actually will be incurred. Many NRCs that incumbent LECs charge their retail customers cover both installation and disconnection of service, and therefore the cost of disconnecting a UNE may already have been recovered by the incumbent LEC.[162] In other cases, the customer may switch to another carrier and the cost of rearranging the facilities would be recovered through the installation charge on the new carrier. We ask parties to provide empirical evidence with respect to the frequency with which facilities actually are disconnected

[161] *Qwest 9-State 271 Order*, 17 FCC Rcd at 26326-27, paras. 218-20.

[162] *Id.* at 26426, para. 219.

and the costs are not recovered through other charges.

128. Another possible complication if disconnect costs are recovered at the time of installation is that the charge should be discounted to reflect the time value of money over the average period for which the competitive LEC is expected to use the UNE. In the absence of objective evidence on which to base this calculation, accelerating the recovery of disconnect costs is likely to lead to an under-recovery or over-recovery of costs. We ask parties that favor such an approach to explain whether there are other factors that outweigh the consequences of having an intentional mismatch between costs and revenues.

4. Loop Conditioning

129. A second specific issue that has created significant disputes at the state level is loop conditioning. In the *UNE Remand Order*, the Commission stated that incumbent LECs could charge for conditioning loops, notwithstanding the fact that such activity may not be necessary in a forward-looking network.[163] The Commission required the states to ensure that any line conditioning charges comply with FCC pricing rules for non-recurring costs.[164] In the *Triennial Review Order*, the Commission stated that state commissions have discretion to determine whether loop conditioning costs are forward-looking costs, and whether those costs should be recovered through recurring charges or non-recurring charges.[165]

130. We ask parties to comment on when and how the costs associated with loop conditioning should be recovered. The Commission noted in the *UNE Remand Order* that, pursuant to industry engineering standards, loops under 18,000 feet in length generally should be free of impairments such as load coils and excessive bridged taps.[166] Under a forward-looking costing methodology, should competitive LECs be required to pay the costs of conditioning such loops? Does the answer to this question depend on whether we retain the network assumptions of the current TELRIC rules? We noted in the *Triennial Review Order* that one option available to state commissions would be to permit NRCs for loop conditioning only in extraordinary circumstances, such as copper loops that are longer than 18,000 feet.[167] Is this a useful distinction? How, if at all, should such NRCs be distributed among the competitive LEC requesting the conditioning and future carriers that provide DSL service over the conditioned loop?

G. Rate Structure

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[163] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, 3784, para. 193 (1999) ("*UNE Remand Order*") (subsequent history omitted).

[164] *UNE Remand Order*, 15 FCC Rcd at 3784, para 194.

[165] *Triennial Review Order* at para 641.

[166] *UNE Remand Order*, 15 FCC Rcd at 3784, para. 193.

[167] *Triennial Review Order* at para. 641. We note that load coils are not necessary for voice service on loops less than 18,000 feet in length and generally can be removed in a batch process; on loops in excess of 18,000 feet, however, load coils are needed for voice service and typically must be removed one loop at a time.

131. The rules adopted in the *Local Competition Order* contain a variety of requirements regarding how UNE rates should be structured. Charges for dedicated facilities, including unbundled loops and dedicated transport, must be flat-rated.[168] The costs of shared facilities, on the other hand, may be recovered through flat-rated or usage-based charges, as long as the rate structure efficiently apportions costs among users.[169] The Commission also allowed, but did not require, the use of peak-period pricing for local switching and other shared facilities.[170]

132. We seek comment on whether, and under what circumstances, changes are needed to our rate structure requirements. Would it be appropriate to require that switching costs be recovered solely through flat-rated charges? What are the benefits and drawbacks of such an approach? Would flat-rated recovery of switching costs comply with the statutory pricing standard under section 252(d)(1)? Would flat-rated prices also be appropriate for shared transport? For example, should the costs of shared transport be allocated among carriers using a facility based on the proportion of lines each carrier connects to the transport facility?

H. Rate Deaveraging

133. In the *Local Competition Order*, the Commission found that geographically deaveraged rates more closely reflect the cost of providing UNEs.[171] The Commission required states to establish at least three cost-based rate zones.[172] During the course of section 271 proceedings, both incumbent LECs and competitive LECs raised concerns about the consequences of UNE rate deaveraging. In addressing these concerns, the Commission has noted that the combination of retail rates that include implicit support flows (and therefore are not entirely cost-based) and the availability of cost-based, deaveraged UNE rates could affect entry incentives with respect to different geographic areas within a state.[173]

134. The *Local Competition Order* also addressed the subject of "class-of-service" deaveraging. The Commission found that there was no evidence that the cost of providing particular UNEs varies with the type of retail service or retail customer.[174] As with geographic deaveraging, the requirement to average UNE rates across different classes of customers affects how attractive customers might be to competitive LECs in states where similar averaging is not

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[168] 47 C.F.R. § 51.509(a), (c).

[169] *Id.* § 51.509(b), (d), (e); *Local Competition Order*, 11 FCC Rcd at 15878, para. 755.

[170] *Local Competition Order*, 11 FCC Rcd at 15878, para. 756-57.

[171] *Id.* at 15882-83, para. 764.

[172] *Id.* at 15882-83, para. 765.

[173] *See, e.g., Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Vermont*, CC Docket No. 02-7, Memorandum Opinion and Order, 17 FCC Rcd 7625, 7661-64, paras. 65-69 (2002) (discussing the relationship between possible retail rate subsidies and UNE "price squeeze" allegations).

[174] *Local Competition Order*, 11 FCC Rcd at 15883, para. 766.

required for retail services. For example, if retail business rates are higher than retail residential rates for a comparable service, but prices are the same for the UNEs necessary to provide that service, we would expect competitive LECs to target high-margin business customers and to avoid low-margin residential customers.

135. Although our *Triennial Review Order* explains how the Commission's impairment standard takes into account implicit support flows among retail services, that order does not directly address issues related to differences in the averaging of incumbent LEC retail rates and UNE rates.[175] Given the Commission's limited ability to influence or control retail local exchange rates, how can the Commission achieve its goal of sending appropriate economic signals with respect to competitive entry and investment? Would changes to our deaveraging policies with respect to UNEs address these concerns or are there alternative steps that the Commission might take?

136. We seek comment on whether, and under what circumstances, we should retain the requirement of geographic deaveraging. What are the consequences of deaveraging UNE prices in states where retail rates are not similarly deaveraged? Would it be appropriate to require deaveraging only in states where retail rates are deaveraged? Is it possible to reconcile such an approach with the cost-based pricing standard contained in section 252(d)?

137. We seek comment on whether, and under what circumstances, to retain the requirement to average rates across different classes of service. Parties that favor elimination or modification of this requirement should present evidence demonstrating that the costs of serving different classes of customers are sufficiently different to warrant deaveraging of those rates. For example, is there objective evidence that the cost of serving business customers is either higher or lower than the cost of serving residential customers? If so, what is the cause of these cost differences? Is deaveraging UNE rates across classes of customers appropriate if retail rates do not reflect these same cost differences?

I. Rate Changes Over Time

138. One issue on which all parties likely agree is that UNE pricing proceedings under the Commission's current rules require a substantial commitment of resources from everyone involved. A typical UNE pricing proceeding may take two to three years to complete, which results in rates that may be outdated at the time they are adopted. Moreover, even as circumstances change, states may be reluctant to adopt new prices to reflect those changes because they are not willing to commit the resources needed for these proceedings.

139. We ask parties to comment on whether there might be mechanisms that could be used to adjust UNE prices over time, thereby reducing the need for state commissions to conduct a full UNE pricing proceeding every few years. Such an approach might, for example, be similar to many price cap regimes, which periodically adjust rates based on productivity and inflation factors. How might such an approach work for UNE prices? In particular, we ask parties how productivity factors might be calculated. Could a single productivity factor be used, or would it

[175] *Triennial Review Order* at paras. 154-69.

be necessary to develop different factors for different UNEs? Could a national factor be used or would it be necessary to develop state-specific productivity factors? What sources of data could we use to derive these factors? We invite parties to provide empirical evidence regarding productivity, such as productivity studies, that we could use to establish productivity factors if we pursue this approach.

140. If the use of productivity factors to adjust rates periodically is feasible, should it be mandatory? Or should states retain the ability to conduct a full UNE pricing proceeding at their discretion? Would a periodic adjustment to rates in lieu of a full UNE pricing proceeding be sufficient to satisfy a state's legal obligations under section 252? Are there methods other than the use of productivity factors that could be used to make periodic rate adjustments?

V. RESALE PRICING

141. Section 252(d)(3) of the Act requires that state commissions establish wholesale rates for resold services based on the incumbent LEC's retail rates, "excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier."[176] In the *Local Competition Order*, the Commission adopted a "reasonably avoidable" standard governing the costs that must be considered avoided when calculating the wholesale discount.[177] That is, the Commission found that any costs that "reasonably can be avoided" by the incumbent LEC when it provides a service at resale must be considered avoided in determining the wholesale discount.[178]

142. The Commission's original resale pricing rules were vacated by the Eighth Circuit in *Iowa Utilities II* because the court found that the rules were inconsistent with the plain meaning of the statute.[179] The Eighth Circuit found that the appropriate standard for determining avoided costs is not those costs that "can be avoided," but rather "those costs that the [incumbent LEC] will actually avoid incurring in the future."[180] Further, the court explained that, when determining avoided costs, the state commission may not assume that the incumbent is acting as a wholesaler only, but rather must assume that the incumbent provider is acting as both a wholesale and a retail provider.[181] The Commission has not conducted any further rulemaking to provide additional guidance on establishing wholesale discounts.

143. In light of *Iowa Utilities II*, we ask parties to comment on the need for the Commission to adopt new rules implementing section 252(d)(3). Is the statutory language, as interpreted by the Eighth Circuit, sufficiently clear that further guidance from the Commission is unnecessary? Parties that favor the establishment of national rules should explain what those

[176] 47 U.S.C. § 252(d)(3).

[177] *Local Competition Order*, 11 FCC Rcd at 15956-15957, para 912.

[178] 47 C.F.R. § 51.609(b).

[179] *Iowa Utilities II*, 219 F.3d at 754-756, 765.

[180] *Id.* at 755.

[181] *Id.*

rules would require. For example, does the court's decision that the discount should be calculated as if the carrier were both a wholesale and retail provider require the Commission or the state commission to make some type of assumption as to how much competition there is in the marketplace, or did the court simply intend for the state to consider the current level of competition and the current split between an incumbent LEC's retail and wholesale services?

144. Is it necessary, or helpful, for the Commission to identify categories of costs that either are presumptively avoided or presumptively not avoided? For example, is it still appropriate for the Commission to conclude, as it did in the *Local Competition Order*, that all marketing, billing, and collection costs are avoided?[182] Parties that favor the Commission establishing this type of presumption should provide objective evidence demonstrating the type of costs that incumbent LECs actually avoid when they provide services to competitors for resale. Under the interpretation of the section 252(d)(3) adopted by the Eighth Circuit, how should common costs be treated? If an incumbent LEC is assumed to be both a retail and a wholesale provider, what types of common costs, if any, actually will be avoided when the incumbent LEC resells services?

145. We ask parties to discuss whether it is necessary, or helpful, for the Commission to establish any evidentiary guidelines with respect to the resale discount. Should incumbent LECs be obligated to file cost studies in support of their proposed discounts, or are there alternative showings that might be sufficient? If studies are required, what level of detail should they contain? Must direct and indirect avoided costs be specifically identified?

146. In the *Local Competition Order*, the Commission concluded that the Subscriber Line Charge (SLC) imposed on retail customers should be paid by resellers, but that it was not subject to the resale discount.[183] Although the SLC relates to interstate access services, which are not subject to the resale discount, it is charged to end users and paid by end users to recover costs for which they are the cost causer. The SLC could, therefore, be considered a retail service for purposes of section 251(c)(4). We ask parties to address whether it would be appropriate for the Commission to revisit its prior analysis of whether the SLC should be subject to the resale discount.

VI. INTERCONNECTION PRICING AND RECIPROCAL COMPENSATION

147. Under section 252(d)(1), interconnection is subject to the same cost-based pricing standard as UNEs.[184] We ask parties to comment on whether there is any reason that changes to the current pricing rules for UNEs should not also apply to interconnection provided pursuant to section 251(c)(2). We note that the Commission is considering issues related to the costs associated with interconnecting networks in the pending *Intercarrier Compensation* proceeding.[185] Parties are invited to comment on the relationship between the section 252(d)(1)

[182] *Local Competition Order*, 11 FCC Rcd at 15958, para. 917.

[183] *Id.* at 15984, para. 984.

[184] 47 U.S.C. § 252(d)(1).

[185] *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001) (*Intercarrier Compensation NPRM*).

pricing standard and proposals for recovery of interconnection costs that are now under consideration in the *Intercarrier Compensation* proceeding. We also invite parties to comment on issues related to the pricing of collocation, which also is subject to the section 252(d)(1) pricing standard. For example, we solicit comment on whether charges for direct current (DC) power should be based on the number of amps consumed or the number of amps fused.

148. In the *Local Competition Order*, the Commission also decided that TELRIC pricing was appropriate for reciprocal compensation under section 251(b)(5).[186] In the *Intercarrier Compensation* proceeding, the Commission sought comment on whether a different interpretation of the "additional cost" standard in section 252(d)(2) was warranted.[187] We ask parties to address whether the Commission should continue to apply the same pricing rules to UNEs and to reciprocal compensation. What would be the consequences of having different pricing regimes for these two different functions?

VII. IMPLEMENTATION ISSUES

149. We ask parties to comment on how any changes to the Commission's UNE pricing rules should be implemented by the states. The pricing standard imposed under section 252(d)(1) applies when states are called on to arbitrate disputes regarding the pricing of interconnection and unbundled network elements.[188] In most states, however, it appears that rates are established in generic proceedings that are not specific to the arbitration between any particular pair of carriers. We ask parties to explain how state commissions have proceeded in establishing prices under section 252(d)(1).

150. We seek comment on whether we should establish a national timetable pursuant to which states will conduct new UNE cost proceedings to reset all rates in accordance with any new rules. If we establish a timetable for initiating new UNE rate proceedings, should we require that such proceedings be resolved within a certain time period, consistent with our direction to the states to perform the granular inquiries set forth in the *Triennial Review* proceeding? If so, is a nine-month time period sufficient to establish new UNE prices? What recourse should carriers have if a state fails to act in the allotted time? Rules that address such considerations could quickly bring consistency and certainty to the UNE market, and we seek comment on our authority to adopt them.

151. We also seek comment on whether it may be appropriate to establish a true-up mechanism for the difference between what a competitor pays for network elements under rates established pursuant to the current TELRIC rules and what that competitor would pay for the same facilities or services under rates established pursuant to any new rules we may adopt in this proceeding. If a true-up mechanism is appropriate, to what period should any true-up be applicable? Should the beginning of the true-up period be the effective date of the final Commission order in this proceeding? Or is some other true up period more appropriate? We

[186] *Local Competition Order*, 11 FCC Rcd at 16023, para 1054.

[187] *Intercarrier Compensation NPRM*, 16 FCC Rcd at 9646, para. 101.

[188] 47 U.S.C. § 252(d)(1).

have recognized in several contexts that the use of interim rates subject to true-up is an appropriate means of protecting all parties' interest when permanent rates under the governing cost methodology have not yet been set.

VIII. PROCEDURAL MATTERS

A. Initial Paperwork Reduction Act Analysis

152. This Notice of Proposed Rulemaking (NPRM) contains either a proposed or modified information collection. As part of the continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 *et seq*. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due 60 days from the date of publication of this NPRM in the Federal Register. Comments should address: 1) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; 2) the accuracy of the Commission's burden estimates; 3) ways to enhance the quality, utility, and clarity of the information collected; and 4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

B. Initial Regulatory Flexibility Act Analysis

153. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[189] the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided below in Section C. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[190] In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.[191]

1. Need for, and Objectives of, the Proposed Rules

154. In this NPRM, the Commission initiates the first comprehensive review of TELRIC pricing rules since they were adopted. Section 252(d)(1) of the Act sets forth the pricing standard for UNEs. Section 252(d)(3) of the Act requires that state commissions establish wholesale rates for resold services based on the incumbent LEC's retail rates. Seven years ago, the Commission adopted its current rules that base UNE prices on the Total Element

[189] *See* 5 U.S.C. § 603 The IRFA, see 5 U.S.C. § 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) Pub. L. No. 104-121, Title II, 110 Stat 857 (1996).

[190] *See* 5 U.S.C. § 603(a).

[191] *See id*

Long Run Incremental Cost (TELRIC) of a UNE.[192] The Commission stated at that time that it would continue to review its pricing rules based on the results of state arbitration proceedings and provide additional guidance as necessary.

155. Based on the wealth of experience that has been developed over the last seven years, the Commission initiates this proceeding to consider whether the TELRIC methodology for pricing UNEs under the Act is working as intended and whether it is conducive to efficient facilities investment. The Commission also requests comment in this proceeding on its resale pricing rules. Incumbent LECs are required to resell retail services pursuant to section 251(c)(4) of the Act. This NPRM seeks to preserve the forward-looking emphasis and pro-competitive purposes of TELRIC, while simplifying this methodology. The Commission's objective is to help state commissions more easily develop UNE prices and resale discounts that meet the statutory standards established by Congress in section 252(d) and to provide more certainty and consistency in the results of these state proceedings.

156. Although the Commission has addressed some specific TELRIC cost input disputes as they have arisen in section 271 proceedings, the Commission's disposition has provided no systematic guidance on pricing issues. This proceeding will provide states and interested parties comprehensive guidance lacking in our consideration of section 271 applications. In the *Triennial Review Order*, the Commission clarified the existing rules regarding two key components of TELRIC – cost of capital and depreciation.[193]

157. Because of the general nature of the Commission's rules and the hypothetical and complex nature of the TELRIC inquiry, it is often difficult to understand how actual UNE rates are derived. Uncertainty or inconsistency in how to apply TELRIC rules may also result in rates that significantly vary from state to state without regard to genuine cost differences. This lack of predictability in UNE rates is difficult to reconcile with the Commission's desire that UNE prices send correct economic signals for competitive and investment purposes. This NPRM seeks to simplify TELRIC pricing, provide more specific guidance to make the TELRIC rate-setting process less speculative and improve the accuracy of its pricing signals.

2. Legal Basis

158. This *Notice* is adopted pursuant to sections 1, 4(i), (4j), 201-205, 251, 252, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), (j), 201-205, 251, 252, and 303.

3. Description and Estimate of the Number of Small Entities to which the Proposed Rules Will Apply

159. The RFA directs agencies to provide a description of and, where feasible, an

[192] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996).

[193] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket No. 01-338, FCC 03-36 (released August 21, 2003).

estimate of the number of small entities that will be affected by the proposed rules.[194] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[195] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[196] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[197] The term "small governmental jurisdiction" is defined as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[198] As of 1997, there were about 87,453 governmental jurisdictions in the United States.[199] This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer. We also note that the term "small governmental jurisdiction" includes state regulatory bodies commonly known as state public utilities commissions or public service commissions which may be directly affected by this NPRM.

160. In this section, we further describe and estimate the number of small entity licensees and regulatees that may also be indirectly affected by rules adopted pursuant to this NPRM. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its *Trends in Telephone Service* report.[200] The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers,[201] Paging,[202] and Cellular and Other Wireless Telecommunications.[203] Under these categories, a

[194] 5 U.S.C. §§ 603(b)(3), 604(a)(3).

[195] *Id.* § 601(6).

[196] *Id.* § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such terms which are appropriate to the activities of the agency and publishes such definitions(s) in the Federal Register."

[197] 15 U.S.C. § 632.

[198] 5 U.S.C. § 601(5)

[199] U.S. Census Bureau, *Statistical Abstract of the United States 2000*, Section 9, pages 299-300, Tables 490 and 492.

[200] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service*, Table 5.3 (May 2002) (*Trends in Telephone Service*).

[201] 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 513310 (changed to 517110 in October 2002).

[202] *Id.* § 121.201, NAICS code 513321 (changed to 517211 in October 2002).

[203] *Id.* § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

161. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a wired telecommunications carrier having 1,500 or fewer employees), and "is not dominant in its field of operation."[204] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[205] We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

162. *Wired Telecommunications Carriers*. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[206] According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year.[207] Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more.[208] Thus, under this size standard, the great majority of firms can be considered small.

163. *Incumbent Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[209] According to Commission data,[210] 1,329 carriers reported that they were engaged in the provision of local exchange services. Of these 1,329 carriers, an estimated 1,024 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted herein.

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[204] 5 U.S.C. § 601(3).

[205] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

[206] 13 C.F.R § 121.201, NAICS code 513310 (changed to 517110 in October 2002).

[207] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 513310 (issued October 2000).

[208] *Id* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

[209] 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in October 2002).

[210] *Trends in Telephone Service* at Table 5.3.

164. *Competitive Local Exchange Carriers (CLECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive exchange services or to competitive access providers or to "Other Local Exchange Carriers," all of which are discrete categories under which TRS data are collected. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[211] According to Commission data,[212] 532 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 532 companies, an estimated 411 have 1,500 or fewer employees and 121 have more than 1,500 employees.[213] In addition, 55 carriers reported that they were "Other Local Exchange Carriers." Of the 55 "Other Local Exchange Carriers," an estimated 53 have 1,500 or fewer employees and two have more than 1,500 employees.[214] Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and "Other Local Exchange Carriers" are small entities that may be affected by the rules and policies adopted herein.

165. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[215] According to Commission data,[216] 229 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 229 companies, an estimated 181 have 1,500 or fewer employees and 48 have more than 1,500 employees.[217] Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by the rules and policies adopted herein.

166. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to operator service providers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[218] According to Commission data,[219] 22 companies reported that they were

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[211] 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in October 2002).

[212] *Trends in Telephone Service* at Table 5.3.

[213] *Id*

[214] *Id.*

[215] 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in October 2002).

[216] *Trends in Telephone Service* at Table 5 3

[217] *Id*

[218] 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in October 2002).

[219] *Trends in Telephone Service* at Table 5 3.

engaged in the provision of operator services. Of these 22 companies, an estimated 20 have 1,500 or fewer employees and two have more than 1,500 employees.[220] Consequently, the Commission estimates that the great majority of operator service providers are small entities that may be affected by the rules and policies adopted herein.

167. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to payphone services providers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[221] According to Commission d... ...[222] 936 companies reported that they were engaged in the provision of payphone services. Of these 936 companies, an estimated 933 have 1,500 or fewer employees and three have more than 1,500 employees.[223] Consequently, the Commission estimates that the great majority of payphone service providers are small entities that may be affected by the rules and policies adopted herein.

168. *Prepaid Calling Card Providers.* The SBA has developed a size standard for a small business within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees.[224] According to Commission data,[225] 32 companies reported that they were engaged in the provision of prepaid calling cards. Of these 32 companies, an estimated 31 have 1,500 or fewer employees and one has more than 1,500 employees.[226] Consequently, the Commission estimates that the great majority of prepaid calling card providers are small entities that may be affected by the rules and policies adopted herein.

169. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to "Other Toll Carriers." This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[227] According to Commission's data,[228] 42 companies reported that their primary telecommunications service activity was the provision of payphone services. Of these 42

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[220] *Id.*

[221] 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in October 2002).

[222] *Trends in Telephone Service* at Table 5.3.

[223] *Id.*

[224] 13 C.F.R. § 121.201, NAICS code 513330 (changed to 517310 in October 2002).

[225] *Trends in Telephone Service* at Table 5.3

[226] *Id.*

[227] 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in October 2002).

[228] *Trends in Telephone Service* at Table 5.3.

companies, an estimated 37 have 1,500 or fewer employees and five have more than 1,500 employees.[229] Consequently, the Commission estimates that most "Other Toll Carriers" are small entities that may be affected by the rules and policies adopted herein.

170. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of Paging[230] and Cellular and Other Wireless Telecommunications.[231] Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1320 firms in this category, total, that operated for the entire year.[232] Of this total, 1303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more.[233] Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.[234] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[235] Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

171. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years.[236] For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years."[237] These standards defining "small entity" in the context of broadband PCS auctions have been

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[229] *Id.*

[230] 13 C.F.R § 121.201, NAICS code 513321 (changed to 517211 in October 2002).

[231] *Id.* § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[232] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Employment Size of Firms Subject to Federal Income Tax: 1997," Table 5, NAICS code 513321 (issued Oct. 2000).

[233] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

[234] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Employment Size of Firms Subject to Federal Income Tax: 1997," Table 5, NAICS code 513322 (issued Oct. 2000).

[235] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

[236] *See Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, Report and Order, 61 FR 33859 (July 1, 1996); *see also* 47 C.F.R. § 24.720(b).

[237] *See id.*

approved by the SBA.[238] No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.[239] On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Based on this information, the Commission concludes that the number of small broadband PCS licenses will include the 90 winning C Block bidders, the 93 qualifying bidders in the D, E, and F Block auctions, the 48 winning bidders in the 1999 re-auction, and the 29 winning bidders in the 2001 re-auction, for a total of 260 small entity broadband PCS providers, as defined by the SBA small business size standards and the Commission's auction rules. Consequently, the Commission estimates that 260 broadband PCS providers are small entities that may be affected by the rules and policies adopted herein.

172. *Narrowband Personal Communications Services.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, "small businesses" were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*.[240] A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards.[241] In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future actions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the

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[238] *See, e.g., Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fifth Report and Order, 59 FR 37566 (July 22, 1994).

[239] FCC News, Broadband PCS, D, E and F Block Auction Closes, No. 71744 (released January 14, 1997). *See also Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses*, WT Docket No. 97-82, Second Report and Order, 62 FR 55348 (Oct. 24,1997).

[240] *Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS*, Docket No. ET 92-100, Docket No. PP 93-253, Second Report and Order and Second Further Notice of Proposed Rulemaking, 65 FR 35875 (June 6, 2000).

[241] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Dec 2, 1998).

Commission's Rules. The Commission assumes, for purposes of this analysis, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

173. *220 MHz Radio Service – Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications" companies. This standard provides that such a company is small if it employs no more than 1,500 persons.[242] According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.[243] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[244] If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard.

174. *220 MHz Radio Service – Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted a small business size standard for "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[245] This small business size standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[246] A "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards.[247] Auctions of Phase II

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[242] 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[243] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Employment Size of Firms Subject to Federal Income Tax: 1997," Table 5, NAICS code 513322 (issued Oct. 2000).

[244] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

[245] *Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, PR Docket No. 89-552, GN Docket No. 93-252, PP Docket No. 93-253, Third Report and Order and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 10943, 11068-70, at paras. 291-95 (1997) (*220 MHz Third Report and Order*).

[246] *Id.* at 11068-70, para. 291.

[247] *See* letter to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

licenses commenced on September 15, 1998, and closed on October 22, 1998.[248] In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.[249]

175. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the previous calendar years.[250] The SBA has approved these size standards.[251] The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz bands to firms that had revenues of no more than $40 million in each of the three previous calendar years, or that had revenues of no more than $15 million in each of the previous calendar years.[252] These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities. Consequently, the Commission estimates that there are 301 or fewer small entity SMR licensees in the 800 MHz and 900 MHz bands that may be affected by the rules and policies adopted herein.

176. *Paging.* In the Paging *Third Report and Order*, we developed a small business size standard for "small businesses" and "very small businesses" for purposes of determining

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[248] *See generally* Public Notice, "220 MHz Service Auction Closes," 14 FCC Rcd 605 (1998).

[249] Public Notice, "Phase II 220 MHz Service Spectrum Auction Closes," 14 FCC Rcd 11218 (1999).

[250] 47 C.F.R. § 90.814(b)(1).

[251] *See* Letter from Aida Alvarez, Administration, Small Business Administration to Daniel B. Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (Oct. 27, 1997). *See* Letter from Aida Alvarez, Administrator, Small Business Administration to Thomas Sugrue, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission (Aug. 10, 1999).

[252] 47 C.F.R. § 90.814(b)(1) A request for approval of 800 MHz standards was sent to the SBA on May 13, 1999. The matter remains pending.

their eligibility for special provisions such as bidding credits and installment payments.[253] A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these size standards.[254] An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000.[255] Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service*, 471 carriers reported that they were engaged in the provision of either paging and messaging services or other mobile services.[256] Of those, the Commission estimates that 450 are small, under the SBA business size standard specifying that firms are small if they have 1,500 or fewer employees.[257]

177. *700 MHz Guard Band Licensees.* In the 700 MHz Guard Band Order, we adopted a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[258] A "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.[259] Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of

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[253] *220 MHz Third Report and Order*, 12 FCC Rcd at 11068-70, paras. 291-295, 62 FR 16004 at paras. 291-295 (1997).

[254] *See* Letter from Aida Alvarez, Administrator, Small Business Administration to Thomas Sugrue, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission (June 4, 1999)

[255] *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, WT Docket No. 96-18, PR Docket No. 93-253, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, 10085, at para. 98 (1999).

[256] *Trends in Telephone Service* at Table 5.3.

[257] *Id.* The SBA size standard is that of Paging, 13 C.F.R. § 121.201, NAICS code 517211.

[258] *See Service Rules for the 746-764 MHz Bands, and Revisions to part 27 of the Commission's Rules*, WT Docket No. 99-168, Second Report and Order, 15 FCC Rcd 5299, 5344, at para. 108 (2000).

[259] *See generally* Public Notice, "220 MHz Service Auction Closes," Report No. WT 98-36 (Wireless Telecommunications Bureau, Oct. 23, 1998).

these bidders was a small business that won a total of two licenses.[260]

178. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.[261] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).[262] The Commission uses the SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons.[263] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

179. *Air-Ground Radiotelephone Service* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service.[264] We will use SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons.[265] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

180. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees.[266] Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875-157.4500 MHz (ship transmit) and 161.775-162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding

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[260] Public Notice, "700 MHz Guard Band Auction Closes," DA 01-478 (released Feb. 22, 2001).

[261] The service is defined in § 22.99 of the Commission's Rules, 47 C.F.R. § 22.99.

[262] BETRS is defined in §§ 22.757 and 22.759 of the Commission's Rules, 47 C.F.R. §§ 22.757 and 22.759.

[263] 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[264] The service is defined in § 22.99 of the Commission's Rules, 47 C.F.R. § 22.99.

[265] 13 C.F.R § 121.201, NAICS codes 513322 (changed to 517212 in October 2002).

[266] *Id.* § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

three years not to exceed $3 million dollars.[267] There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards.

181. *Fixed Microwave Services.* Fixed microwave services include common carrier,[268] private operational-fixed,[269] and broadcast auxiliary radio services.[270] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees.[271] The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We noted, however, that the common carrier microwave fixed licensee category includes some large entities.

182. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.[272] There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for "Cellular and Other Wireless Telecommunications" services.[273] Under that SBA small business size standard, a business is

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[267] *Amendment of the Commission's Rules Concerning Maritime Communications*, PR Docket No. 92-257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

[268] *See* 47 C.F.R. §§ 101 *et seq.* (formerly, Part 21 of the Commission's Rules) for common carrier fixed microwave services (except Multipoint Distribution Service).

[269] Persons eligible under parts 80 and 90 of the Commission's Rules can use Private Operational-Fixed Microwave services. *See* 47 C.F.R. Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[270] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. *See* 47 C.F.R. Part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

[271] 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[272] This service is governed by Subpart I of Part 22 of the Commission's Rules. *See* 47 C.F.R. §§ 22.1001-22.1037.

[273] 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

small if it has 1,500 or fewer employees.[274]

183. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A "small business" is an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" is an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these small business size standards.[275] The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as "very small business" entities, and one that qualified as a "small business" entity. We conclude that the number of geographic area WCS licensees affected by this analysis includes these eight entities.

184. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses – an entity that has average gross revenues of $40 million or less in the three previous calendar years.[276] An additional size standard for "very small business" is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[277] The SBA has approved these small business size standards.[278] The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and polices adopted herein.

185. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and ITFS.* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS).[279] In connection with the 1996 MDS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years.[280] The MDS auctions resulted in 67 successful bidders obtaining

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[274] *Id.*

[275] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Dec. 2, 1998).

[276] *See* Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, ET Docket No. 95-183, *Report and Order*, 63 FR 6079 (Feb. 6, 1998)

[277] *Id*

[278] *See* Letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Feb 4, 1998).

[279] *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, MM Docket No. 94-131 and PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589, 9593 at para. 7 (1995).

[280] 47 C.F.R. § 21.961(b)(1).

licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating $12.5 million or less in annual receipts.[281] According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year.[282] Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard also appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.[283] Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

186. *Local Multipoint Distribution Service* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.[284] The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[285] An additional small business size standard for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[286] The SBA has approved these small business size standards in the context of LMDS auctions.[287] There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers.

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[281] 13 C.F.R. § 121.201, NAICS code 513220 (changed to 517510 in October 2002).

[282] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 513220 (issued October 2000).

[283] In addition, the term "small entity" within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6). We do not collect annual revenue data on ITFS licensees.

[284] *See Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, and to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, CC Docket No. 92-297, Second Report and Order, 12 FCC Rcd 12545 (1997).

[285] *Id*

[286] *See id.*

[287] *See* Letter to Dan Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

187. *218-219 MHz Service.* The first auction of 218-219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years.[288] In the *218-219 MHz Report and Order and Memorandum Opinion and Order*, we established a small business size standard for a "small business" as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years.[289] A "very small business" is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years.[290] The SBA has approved these size standards.[291] We cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218-219 MHz spectrum.

188. *24 GHz – Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of "Cellular and Other Wireless Telecommunications" companies. This category provides that such a company is small if it employs no more than 1,500 persons.[292] According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.[293] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[294] Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent[295] and TRW, Inc. It is our understanding that Teligent and its related companies have less than

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[288] *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fourth Report and Order, 59 FR 24947 (May 13, 1994).

[289] *Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service*, WT Docket No 98-169, Report and Order and Memorandum Opinion and Order, 64 FR 59656 (Nov. 3, 1999).

[290] *Id.*

[291] *See* Letter to Daniel B. Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration (Jan. 6, 1998).

[292] 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[293] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Employment Size of Firms Subject to Federal Income Tax: 1997," Table 5, NAICS code 513322 (issued Oct. 2000).

[294] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

[295] Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

189. *24 GHz – Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for "small business" is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million.[296] "Very small business" in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years.[297] The SBA has approved these small business size standards.[298] These size standards will apply to the future auction, if held.

190. *Internet Service Providers.* While internet service providers (ISPs) are only indirectly affected by our present actions, and ISPs are therefore not formally included within this present IRFA, we have addressed them informally to create a fuller record and to recognize their participation in this proceeding. The SBA has developed a small business size standard for Online Information Services, which consists of all such companies having $21 million or less in annual receipts.[299] According to Census Bureau data for 1997, there were 2,751 firms in this category, total, that operated for the entire year.[300] Of this total, 2,659 firms had annual receipts of $9,999,999 or less, and an additional 67 had receipts of $10 million to $24,999,999.[301] Thus, under this size standard, the great majority of firms can be considered small.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

191. We do not intend that any proposal we may adopt pursuant to this *Notice* will increase existing reporting, recordkeeping or other compliance requirements. Rather, we seek to simplify TELRIC pricing and modify or clarify the Commission's rules to help state commissions more easily develop UNE prices and resale discounts that meet the statutory standards established by Congress in section 252(d) and to provide more certainty and consistency in state proceeding outcomes.

5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

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[296] *Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules to License Fixed Services at 24 GHz*, WT Docket No. 99-327, Report and Order, 15 FCC Rcd 16934, 16967 (2000), *see also* 47 C.F.R. § 101.538(a)(2).

[297] *Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules to License Fixed Services at 24 GHz*, WT Docket No. 99-327, Report and Order, 15 FCC Rcd at 16967; *see also* 47 C.F.R. § 101.538(a)(1).

[298] *See* Letter to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Gary M. Jackson, Assistant Administrator, SBA (July 28, 2000).

[299] 13 C.F.R. § 121.201, NAICS code 514191 (changed to 518111 in October 2002).

[300] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Receipts Size of Firms Subject to Federal Income Tax: 1997," Table 4, NAICS code 514191 (issued October 2000).

[301] *Id*

192. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[302]

193. We will consider any proposals made to minimize significant economic impact on small entities. The overall objective of this proceeding is to simplify TELRIC pricing while simultaneously improving the accuracy of its pricing signals. The *Notice* seeks comment on an approach that bases UNE prices on a cost inquiry that is more firmly rooted in the real-world attributes of the existing telecommunications network, rather than the speculative attributes of a purely hypothetical network. This may change the standards applicable to cost studies on which UNE prices are based and indirectly result in changes to rates for UNEs that competitive LECs, including small carriers, order from incumbent LECs.

194. State commissions stand to benefit directly to the extent that we clarify our TELRIC rules and provide more specific guidance so that state proceedings to determine UNE pricing and the resale discount become a less complex and speculative process. Providing greater certainty and consistency in how to apply our rules could help make the regulatory process throughout states more efficient and streamlined, indirectly benefiting small entities which participate in these proceedings. Complicated and time-consuming proceedings may work to divert scarce resources from small carriers that otherwise would use those resources to compete in local markets. Moreover, to the extent that we may be able to enhance the TELRIC ratemaking process, we may better be able to achieve the Commission's goal of sending appropriate economic signals to the marketplace for efficient competition and entry among providers that include small entities.

6. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

195. None.

C. Ex Parte Presentations

196. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[303] Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required.[304]

[302] 5 U.S.C. § 603(c).

[303] 47 C.F.R. § 1.1200 *et seq.*

[304] *Id.* § 1.1206(b)(2).

Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules [305]

D. Comment Filing Procedures

197. Pursuant to sections 1.415 and 1.419 of the Commission's rules,[306] interested parties may file comments not later than 60 days after publication of this Notice in the Federal Register and may file reply comments not later than 45 days after the date for filing comments. In order to facilitate review of comments and reply comments, parties should include the name of the filing party and the date of the filing on all pleadings. Comments and reply comments must clearly identify the specific portion of the NPRM to which a particular comment or set of comments is responsive. Each new section should begin on a new page. If a portion of a party's comments does not fall under a particular topic listed in the Table of Contents, such comments be included in a clearly labeled section at the beginning or end of the filing.

198. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.[307] Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/cgb/ecfs>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to <ecfs@fcc.gov>, and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply.

199 Parties who choose to file by paper must file an original and five copies of each filing. Two (2) copies of the comments should also be sent to the Chief, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554

200. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail).

- The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002 The filing hours at this location are 8 a.m to 7 p.m All hand deliveries must be held together with

[305] *Id* § 1 1206(b)

[306] *Id* §§ 1.415, 1 419.

[307] *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998)

rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than United States Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be sent to 445 12th Street, S.W., Washington, DC 20554. The Commission advises that electronic media not be sent through USPS
- All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

201. Documents in this docket are available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, DC 20554. The documents may also be purchased from Qualex International, telephone (202) 863-2893, facsimile (202) 863-2898.

202. Written comments by the public on the proposed and/or modified information collections are due on the same day as comments on the NPRM, i.e., on or before 60 days after publication of the NPRM in the Federal Register. Written comments must be submitted by OMB on the proposed and/or modified information collections on or before 60 days after publication of the NPRM in the Federal Register In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, S W., Washington, D.C. 20554, or via the Internet to jbherman@fcc.gov, and to Jeanette Thornton, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, N.W., Washington, D.C. 20503 or via the Internet to JThornto@omb.eop.gov.

IX. ORDERING CLAUSES

203. IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 4(j), 201-205, 251, 252, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), (j), 201-205, 251, 252, and 303, NOTICE IS HEREBY GIVEN of the rulemaking described above and COMMENT IS SOUGHT on those issues.

204. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H Dortch
Secretary